

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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**IN RE: Bair Hugger Forced Air Warming Products  
Liability Litigation**

**MDL No. 15-2666 (JNE/FLN)**

*This Document Relates To:*

**MARC MAZER,  
PLAINTIFF**

**No. 17-cv-03819-JNE-FLN**

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**RESPONSE TO MOTION TO DISMISS  
FOR FAILURE TO COMPLY WITH PTO NO. 14**

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COMES NOW, Plaintiff Marc Mazer, by and through his undersigned counsel ("Counsel"), and files his response to the Defendants' Motion to Dismiss for Failure to Comply with PTO No. 14 [ECF 1068] as follows:

1. On August 16, 2017, following analysis of the pertinent medicals records, Counsel's staff ("Staff") confirmed via telephone Mr. Mazer's desire to commence litigation.
2. On August 18, 2017, Counsel filed Mr. Mazer's short form Complaint in this Court [ECF 1; 17-cv-03819].
3. On August 22, 2017, Staff notified Mr. Mazer of the filing by letter. That letter also stressed the importance of the timely completion of Mr. Mazer's Fact Sheet ("PFS") and set a twenty one (21) day deadline by which Mr. Mazer was to return an initial,

rough draft of the PFS to Counsel, after which the PFS would be revised and completed with additional input from Counsel, Staff, and Mr. Mazer.

4. In September 2017, Staff spoke to Mr. Mazer by telephone and confirmed he was preparing the draft PFS.
5. On October 10, 2017, Staff spoke to Mr. Mazer by telephone. Mr. Mazer reported he was still working on the draft PFS, but would mail it to Counsel by October 20, 2017. It was not received.
6. On November 1, 2017, Staff spoke to Mr. Mazer by telephone. Mr. Mazer reported the draft PFS was still not finished, but he would complete it soon. Staff confirmed Mr. Mazer's desire to proceed with the litigation and stressed the PFS deadline was fast approaching.
7. Also on November 1, 2017, Counsel sent a letter to Mr. Mazer stressing the urgency of completing the PFS, the potential jeopardy if not completed, and requesting immediate contact upon receipt of the letter. Mr. Mazer did not respond.
8. Staff attempted to contact Mr. Mazer by telephone and voicemail on November 13, 14, and 15. Mr. Mazer did not respond.
9. Mr. Mazer's PFS was due on or about November 16, 2017. Admittedly, the PFS was not timely completed.

10. Thereafter, Counsel sent four additional letters to Mr. Mazer requesting immediate contact and urging completion of the PFS else risk the dismissal of his case.<sup>1</sup> Mr. Mazer did not respond.
11. Staff also continued its attempts to reach Mr. Mazer by phone and voicemail on forty-two (42) additional occasions.<sup>2</sup> Mr. Mazer did not respond.
12. Counsel notified defense counsel, Mr. Hulse, on December 13, 2017, and January 11, 2017, explaining that despite almost daily attempts to contact Mr. Mazer by letter or telephone each of those attempts was unsuccessful.
13. Despite many attempts and as of the date of this response, neither Counsel nor Staff has had further contact with Mr. Mazer since November 1, 2017, during which conversation Mr. Mazer expressed his desire to proceed with the litigation.
14. The PFS is still not completed.

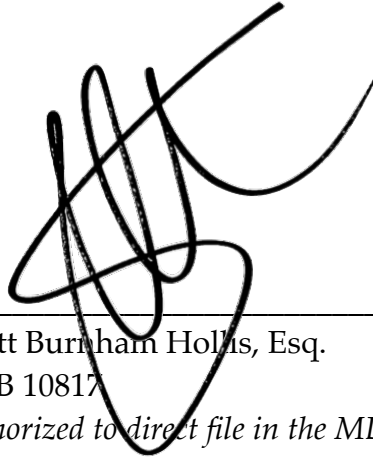
WHEREFORE, IN RESPONSE, Counsel requests the Court give deference to Mr. Mazer's November 1, 2017, stated intention to proceed with the litigation and deny the Defendants' Motion to Dismiss.

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<sup>1</sup> November 16, 2017; November 27, 2017; December 14, 2017; and February 2, 2017.

<sup>2</sup> November 17, 2017; November 27, 2017; November 28, 2017; November 29, 2017; November 30, 2017; December 1, 2017; December 5, 2017; December 8, 2017; December 11, 2017; December 12, 2017; December 13, 2017; December 14, 2017; December 15, 2017; December 18, 2017; December 19, 2017; December 20, 2017; December 26, 2017; December 27, 2017; December 28, 2017; December 29, 2017; January 2, 2018; January 3, 2018; January 4, 2018; January 5, 2018; January 9, 2018; January 10, 2018; January 15, 2018; January 16, 2018; January 17, 2018; January 18, 2018; January 19, 2018; January 22, 2018; January 23, 2018; January 24, 2018; January 25, 2018; January 26, 2018; January 27, 2018; January 29, 2018; January 30, 2019; January 31, 2019; February 1, 2018; February 2, 2018.

This the 4th day of February, 2018.



Scott Burroughs Hollis, Esq.

MSB 10817

*authorized to direct file in the MDL*

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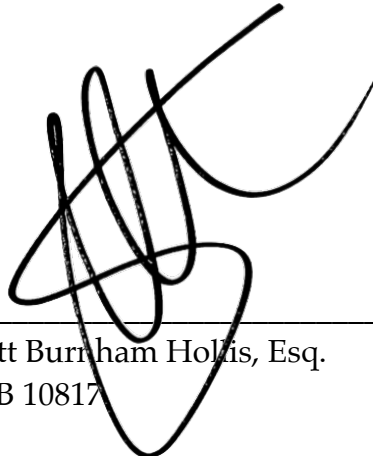
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*In association with Merkel & Cocke, PA and  
Parilman & Associates, P.C.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing via electronic means or ECF to all counsel of record:



Scott Burroughs Hollis, Esq.

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